

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-077-00779R

Parcel No. 090/03328-000-000

Jerry Smith,
Appellant,

vs.

Polk County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 9, 2016. Jerry Smith was represented Linda Lawson. Assistant Polk County Attorney Christina Gonzalez represented the Board of Review.

Smith is the owner of a residential, one-story home located at 1142 37th Street, Des Moines. It was built in 1910 and has 1168 square feet of above-grade finish; a full basement; an open porch; and two enclosed porches. The home is listed in poor condition. The site is 0.258 acres.

The property's January 1, 2015, assessment was \$74,600, allocated as \$34,400 in land value and \$40,200 in improvement value. Smith's protest to the Board of Review claimed the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). Smith also wrote in the area of the petition reserved for an equity claim; however, the comments reiterated his claim of over assessment. The Board of Review denied the petition. Smith then appealed to PAAB, reasserting his claim. He believes the property's correct fair market value is \$55,000.

Findings of Fact

Linda Lawson testified on Jerry Smith's behalf. Lawson stated that the subject property is over 100-years old and has not been updated since Smith purchased it in 1989. She noted the property lacks air conditioning and a garage; has outdated electrical; is in need of painting; has foundation issues; has older finishes throughout; and the floor plan has functional obsolescence due to the refrigerator being located in a stairwell rather than in the kitchen. Smith submitted multiple photographs that corroborate Lawson's testimony. (Ex. 23). The record is undisputed that the subject property is in poor condition.

Lawson also testified that although the property has a driveway, it is has retaining walls on either side, which results in making it narrow and unusable. As a result, Smith has to park his car on the street. Further complicating the parking situation, there is an apartment complex across the street and he has to compete with tenants for the street parking. (Exs. 21-22).

Smith submitted numerous exhibits that he believes support his claim that the property is over assessed. While we recognize the care and detailed effort that went into Smith's evidence, ultimately, we do not find all the exhibits relevant in determining market value, and do not find it necessary to analyze each document individually.

PAAB previously adjudicated this property in 2009. (Ex. 7). In that case, the Board of Review submitted an appraisal completed by Michael Swaim, of Swaim Appraisal Services, West Des Moines. Smith relied on the 2009 Swaim appraisal (Ex. 5), in part, to develop his own opinion of market value for the January 1, 2015, assessment date.

Smith submitted a list of six sales that occurred in 2013 and 2014 (Ex. 9) that he considered comparable to his property. Each sale was then adjusted for differences in an effort to establish the fair market value of the subject property. Lawson explained the adjustments were made using the Swaim appraisal and those applied by the Assessor's Office in the comparables that office supplied to the Board of Review. (Exs. 10-15). The following chart is a summary of his comparable properties.

Address	Sale Price	Sale Date	Adjusted Sale Price
1 - 2417 College Ave	\$27,000	Sep-14	\$24,899
2 - 2720 Mondamin Ave	\$31,000	Oct-14	\$29,300
3 - 1825 24th Dr	\$20,000	Jun-14	-\$35,352
4 - 1223 56th St	\$25,000	Mar-14	-\$10,055
5 - 3308 Clark St	\$30,000	Jun-13	\$ 1,356
6 - 1658 24th St	\$35,000	Nov-13	\$27,238

As an example, Sale #2, located at 2720 Mondamin Avenue (Ex. 11), was adjusted for age, condition, gross living area (GLA), functional utility, heating/cooling, and a fireplace. Smith adjusted the GLA upward \$15,660. This adjustment was arrived at by taking the difference in GLA of this property compared to the subject (392 square feet), and multiplying that difference by the sale-price-per-square-foot of the sale (\$39.95). This sale was adjusted \$3000 for functional utility based on the adjustment Swaim had made in his 2009 appraisal to reflect the subject's lack of off-street parking. The heating/cooling and fireplace adjustments were similarly adjusted based on Swaim's appraisal. Additionally, a -\$3360 adjustment was made for the ten-year difference in age between this property and the subject. He based this on his understanding of the Assessor's Office adjustments for age in their analysis submitted to the Board of Review, which were made at roughly \$360 per year of construction. (Ex. F). Moreover, Smith relied on this document (Ex. F) to determine a condition adjustment for his analysis. He adjusted Sale #2, -\$10,500 for its below-normal condition rating, which is superior to the subject's poor condition rating.

While we recognize Smith's efforts in identifying comparable properties, and attempting to adjust them for differences to arrive at an opinion of market value; his methodology is flawed. This is demonstrated, in part, by the fact that two of Smith's adjusted sales have a negative value, and one has a nominal value of less than \$1500 compared to the subject property.

Director of Litigation, Amy Rasmussen, testified for the Board of Review. She testified that despite the due diligence displayed by Smith, the analysis is flawed in that

it is using adjustments from a dated appraisal or attempting to apply adjustments from the Assessor's Office. As a result, the conclusions are flawed and not reliable.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Smith submitted six adjusted sales for analysis, and provided a detailed explanation of how he arrived at his conclusions. Smith was diligent in the process and

attempted to determine the 2015 fair market value of the subject property by developing a sales comparison approach. Unfortunately, the methodology to determine adjustments for specific elements is unorthodox, relies on dated information, and may not reflect the 2015 market value. Therefore, we find Smith has not demonstrated his property is over assessed.

Order

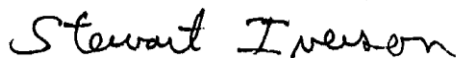
IT IS THEREFORE ORDERED that the Polk County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 18th day of July, 2016.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

Copies to:

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Christina Gonzalez by eFile